WP(C) 1849/2007

BEFORE

THE HON'BLE MR JUSTICE IA ANSARI

Heard Mr. B Chakraborty, learned counsel for the petitioners, and Dr. B Ahmed, learned counsel, appearing on behalf of the respondent Nos. 1 and 2. Heard also Mr. S Das, learned Government Advocate, for the respondent No. 3, and Mr. AK Goswami, learned Senior counsel, appearing on behalf of the respondent No.4.

This writ petition relates to settlement of No. 47 Bashkandi Anua Fishery, which is under the control of the Assam Fisherry Development Corporation Limited (in short, 'AFDC'). Though it is the case of the writ petitioners that the said fishery was settled by the AFDC to the respondent No.4, during the year 2001, the 'AFDC' and the respondent No. 4 claim that the said fishery was settled with the respondent No.4 in the year 2002. Even if the year of settlement is treated to be the year of 2002, the fact remains that it is the admitted case of the parties that the settlement was made for a period of 5 years and even, according to the respondents, the period of settlement of the said fishery, granted in favour of the respondent No. 4, had come to end on 31-03-2007. For the purpose of making the said settlement, there was, admittedly, no selection process; rather, the said fishery was directly settled with the respondent No.4 by the 'AFDC'. It is, now, submitted by Dr. Ahmed, that the 'AFDC' had to settle the said fishery directly with the respondent No. 4 on account of the fact that the fishermen corporative were not willing to run the fishery as the fishery was an old one and required huge investments.

While considering the above submissions made on behalf of the respondents, what needs to be pointed out is that the decision of the Full Bench, in M/S. 129 HARIA DABLONG MIN MAHAL SAMABAI SAMITY LTD. -VS- ASSAM FISHERIES DEVP. CORPORATION LTD. & ORS. reported in 2001(1)GLT 454, leaves no room for doubt that the 'AFDC' has no authority or power to lease out or settle any of the fisheries without inviting tenders. In such circumstances, the settlement of the said fishery in favour of the respondent No.4 is ex facie without jurisdiction. Once the settlement of the said fishery, in favour of the respondent No.4 had been found to be wholly without jurisdiction, it is not material as to why such direct settlement had been granted, particularly, when there is absolutely no discernible material on record to show that the settlement, in favour fo the respondent No.4, was made by following any selection process.

Coming to the order, dated 12-04-2007, whereby extension for a further period of one year has been granted in favour of the respondent No. 4, it needs to be noted that the lease given to the respondent No.4 had already expired on 31-03-2007 by efflux of time. Hence, the question of extending the period of lease, on 12-04-2007, did not arise at all.

In view of the fact that the original settlement, made in favour of the respondent No. 4, was in clear violation of the law, the subsequent order, dated 12-04-2007, whereby the fishery has been settled for a further period of one year, in favour of the respondent No. 4, has no legs to stand.

In the result and for the foregoing reasons, this writ petition succeeds and the order, dated 12-04-2007, aforementioned is hereby set aside and quashed.

With the above observations and directions, this writ petition shall stand disposed of.

No order as to costs.